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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF VIRGINIA  
ALEXANDRIA DIVISION

JAMES GHAI SAR AND KELARA GHAI SAR, )  
INDIVIDUALLY AND AS PERSONAL )  
REPRESENTATIVES AND )  
CO-ADMINISTRATORS OF THE ESTATE )  
OF BIJAN C. GHAI SAR, DECEASED )  
  
VS. )  
  
UNITED STATES OF AMERICA )  
\_\_\_\_\_ )

1:19-CV-1224  
  
ALEXANDRIA, VIRGINIA  
OCTOBER 30, 2020

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TRANSCRIPT OF MOTION HEARING  
BEFORE THE HONORABLE CLAUDE M. HILTON  
UNITED STATES DISTRICT JUDGE  
  
\_\_\_\_\_

Proceedings reported by stenotype, transcript produced by  
Julie A. Goodwin.

A P P E A R A N C E S

FOR THE PLAINTIFFS:

HARRIS, WILTSHIRE & GRANNIS LLP  
By: MR. THOMAS G. CONNOLLY  
MR. ROY L. AUSTIN, JR.  
1919 M Street NW  
Eighth Floor  
Washington, D.C. 20036  
202.730.1300  
tconnolly@hwglaw.com

FOR THE DEFENDANT:

UNITED STATES ATTORNEY'S OFFICE - CIVIL DIVISION  
By: MS. MEGHAN E. LOFTUS  
MR. DENNIS C. BARGHAAN, JR.  
MS. KIMERE J. KIMBALL  
Assistant U.S. Attorneys  
2100 Jamieson Avenue  
Alexandria, Virginia 22314  
703.299.3700  
meghan.loftus@usdoj.gov  
dennis.barghaan@usdoj.gov  
kimere.kimball@usdoj.gov

OFFICIAL U.S. COURT REPORTER:

MS. JULIE A. GOODWIN, CSR, RPR  
United States District Court  
401 Courthouse Square  
Eighth Floor  
Alexandria, Virginia 22314  
512.689.7587

1 (OCTOBER 30, 2020, 9:54 A.M., OPEN COURT.)

2 THE COURTROOM DEPUTY: Civil Action Number  
3 2019-CV-1224, *Ghaisar, et al. versus United States of America.*

4 MR. CONNOLLY: Your Honor, good morning. Tom Connolly  
5 and Roy Austin on behalf of the Ghaisar family.

6 THE COURT: Good morning.

7 MS. LOFTUS: Good morning, Your Honor. Meghan Loftus,  
8 Assistant United States Attorney, here on behalf of the United  
9 States. With me at counsel's table is Deputy Civil Chief  
10 Dennis Barghaan and Assistant United States Attorney Kimere  
11 Kimball, along with our paralegal, Petra Kruzel.

12 Your Honor, there are two motions here before the  
13 Court this morning, or two sets of motions rather, the United  
14 States' motion to reconsider the stay and the parties'  
15 cross-motions for summary judgment.

16 Respectfully, the United States would like to be  
17 heard first on the stay motion.

18 THE COURT: All right.

19 MS. LOFTUS: Before I proceed, I'll be arguing the  
20 stay motion and my colleague, Ms. Kimball, will be arguing the  
21 wrongful death claim on the parties' cross-motions for summary  
22 judgment, and I will also be handling the intentional  
23 infliction of emotional distress claim for the United States.

24 Your Honor, this Court denied our motion to stay  
25 back in August because there was no timetable as to whether or

1 when there would be indictments of Officers Amaya and Vinyard  
2 in Fairfax County, but now we know that the circumstances have  
3 changed. Both officers have been indicted by a grand jury in  
4 Fairfax County for the very same conduct at issue in this civil  
5 case.

6           The United States and plaintiffs agree that it  
7 would be appropriate for this Court to stay the trial currently  
8 scheduled for November 16th through 18th. The only point of  
9 disagreement between the parties is whether the Court should  
10 proceed to rule on summary judgment now or to wait. Plaintiffs  
11 would prefer that this Court move ahead with ruling on summary  
12 judgment, but functionally, there's no difference between  
13 summary judgment and trial.

14           Both the legal standard and the evidence that the  
15 Court would consider is the same in both. And as this Court  
16 can see in the parties' summary judgment briefings, both sides  
17 utilize information from the officers to establish elements of  
18 their claims, the plaintiffs through adverse inferences and the  
19 United States via its expert witness. Now the parties dispute  
20 the opposing party's use of the testimony in this way. The  
21 Court would need to decide these hotly contested legal issues  
22 to resolve summary judgment. Whereas if the case were stayed,  
23 those issues may very well be resolved.

24           As to the length of any possible delay from a stay,  
25 no one can definitively say when the criminal charges will be

1 resolved. There are statutory and constitutional speedy trial  
2 concerns that could provide some guide, but in any event, a  
3 mere delay in resolving the civil case does not merit denying  
4 the stay. In fact, courts in similar postures where there has  
5 been an indictment but no criminal trial date yet set have  
6 stayed the civil case.

7           And unless this Court has further questions, the  
8 United States respectfully requests that you reconsider its  
9 motion to stay all the proceedings and stay the proceedings  
10 pending the resolution of criminal charges in Fairfax County.

11           THE COURT: All right.

12           What a fancy mask you have there. That's two -- I  
13 don't usually see the two-toned.

14           MR. CONNOLLY: Judge, my wife is an artist, and she  
15 stole from Rothko, I think.

16           May it please the Court. Your Honor, almost three  
17 years ago Bijan Ghaisar was gunned down by two Park Police  
18 officers. His family has waited now three years to get some  
19 semblance of justice in this case. And now we sit here, three  
20 years later, and the government has once again asked for an  
21 indefinite stay of this case.

22           As I explained in the last argument, I want at  
23 least the Court to understand what that actually means for the  
24 Ghaisar family. That means within the next month or two  
25 counsel for the indicted officers will be in this court seeking

1 an argument that they should not be prosecuted whatsoever  
2 because they have immunity under the supremacy clause. That  
3 litigation will last months, if not longer.

4 And whatever party does not prevail in that case is  
5 going to go back in front of the Fourth Circuit and they're  
6 going to argue that on appeal. And we're talking about 18  
7 months to two years before the Ghaisars are back here in this  
8 courtroom. And all that might, might matter - might - if they  
9 had any assurance here at all that these police officers will  
10 ever testify under any circumstances.

11 And, Judge, they won't. There is zero chance of  
12 that happening.

13 So, the officers may or may not prevail on their  
14 supremacy clause immunity argument, but let's not forget that  
15 the federal charges here may not be over, because let me assure  
16 the Court that if there's a change in administration,  
17 Mr. Austin and I will be going back to the Department of  
18 Justice asking them to revisit the decision about whether their  
19 lying prosecutors recommended a prosecution of these officers,  
20 and it was only barred by political agents of the Department of  
21 Justice.

22 Under those circumstances, there is no chance that  
23 any competent defense lawyer would ever allow these police  
24 officers to testify under any circumstances, particularly since  
25 federal charges don't carry any statute of limitations.

1           We are never going to hear the testimony of these  
2 officers ever, whether it's three months from now or six months  
3 from now or 18 months from now or 24 months from now.

4           So, it seems that the government is proposing the  
5 following: An indefinite stay perhaps that lasts two years,  
6 Your Honor. So we're here two years now, later. And what do  
7 we say? Has the United States reached out to these -- the  
8 officers' attorneys now to ask whether, assuming such and such  
9 happens in the next 6 to 8 to 12 or 15 months, whether the  
10 officers would testify or not?

11           I think that's a question the Court should direct  
12 to the prosecutors, because I guarantee they haven't. And the  
13 reason is that they understand there will never be testimony by  
14 these officers in this case or otherwise.

15           So what the government seems to be proposing is the  
16 following: Some indefinite time, two years hence, the Ghaisars  
17 will now have waited five years to get some semblance of  
18 justice. We'll come back in front of this Court, and we'll  
19 make a determination whether these officers will testify or  
20 not.

21           So let's assume that the unicorn event occurs and  
22 these guys -- the officers say, yes, we will testify. So what  
23 do we do then? Are the government then saying, Judge, we need  
24 to reopen discovery now? We need to reopen the discovery that  
25 we have undertaken for the last nine months, reopen discovery

1 so that we can get the testimony of the officers and the  
2 deposition so that we can then have a whole new round of  
3 summary judgment briefs to tee this up for the Court again. So  
4 now we're at five and a half years.

5           The Ghaisars, Your Honor, they desperately wanted  
6 to hear from these officers. They're the party that have been  
7 harmed by these officers' refusal to testify. They wanted me  
8 and Mr. Austin to ask questions such as, how in the world when  
9 you know that Bijan Ghaisar was struck in a minor traffic  
10 accident, how in the world would you run up to his -- his car  
11 and point a weapon at his head?

12           Not once, not twice. How in the world, Officers,  
13 would you possibly think is appropriate to execute this man  
14 after a minor traffic stop where he's -- there's no hint of  
15 violent conduct, no hint of harm to himself or others or these  
16 officers, not a hint whatsoever.

17           The Ghaisars would like the answers to those  
18 questions from these officers' mouths, but they'll never get it  
19 because these officers will never testify.

20           So we have a situation here where the officers'  
21 refusal to testify -- and by the way, it's their constitutional  
22 right. I'm not criticizing that. Their refusal to testify  
23 perhaps has harmed the government some. It's clearly harmed  
24 the Ghaisars. They've not been able to get answers to the  
25 questions that they've been wanting to get answers for three



1 years: Why in the world did this happen? But when you have a  
2 weight of the equities in terms of the harms to the two  
3 parties -- the Ghaisar family, they didn't hire these officers.  
4 They didn't train them. They didn't fail to discipline them  
5 when they had created excessive force in past incidences. They  
6 had nothing to do with them.

7           These are officers hired by the United States,  
8 trained by the United States. And under those circumstances in  
9 light of the alignment of the parties, as we've mentioned  
10 multiple times in our briefs, what happened in those  
11 circumstances routinely, as courts say, in light of those  
12 circumstances -- in fact, the plaintiffs themselves are harmed  
13 by this -- we will draw adverse inferences against the  
14 officers. We will go forward on summary judgment. And that's  
15 what I'm urging the Court to do today.

16           THE COURT: All right.

17           MS. LOFTUS: Thank you, Your Honor.

18           As Mr. Connolly notes, it is -- none of us can sit  
19 here today and predict the timing of when these criminal  
20 charges will be resolved, but this is a situation that courts  
21 face time and again in the face of an uncertain criminal trial  
22 schedule. In fact, there are cases cited in our briefs where  
23 courts have stayed the civil cases pending the conclusion of  
24 investigations, which is certainly not the posture we're in  
25 here, but all this to say is it would not be unprecedented to

1 stay the proceedings here.

2 I would also note that this Court had the *Bivens*  
3 litigation that involved the officers directly, and they told  
4 this Court in filings that they wanted to testify. I believe  
5 that was the filing to stay the *Bivens* action. I don't have  
6 the docket number in front of me.

7 And finally, I would just like to note, as we'll  
8 discuss once we get into the summary judgment briefing, our  
9 colleagues wish this Court to draw adverse inferences. We  
10 disagree because of the fact that this Court cannot draw  
11 reliable adverse inferences given what limited officer  
12 testimony we do have in the record, and so both parties are --  
13 are in a situation where the officer testimony is absolutely  
14 essential to their cases.

15 And for the reasons stated earlier and in both of  
16 our sets of briefings, we respectfully request that you stay  
17 these proceedings until the resolution of criminal charges.

18 THE COURT: Well, I believe I ought to reconsider my  
19 denial of a stay. I believe the government is entitled to have  
20 the testimony of the officers, and in the interest of justice  
21 we ought to have the testimony of the officers if that can be  
22 had. And I think you're entitled to a reasonable stay to  
23 figure out how this is going to turn out.

24 Now, plaintiffs' counsel projects it to be years  
25 and years. Maybe, maybe not. I don't know. But what would

1 be -- I'll grant a stay in this case, but I'm not going to  
2 grant an unlimited one.

3 What would be a reasonable period of time? Do you  
4 have any idea of the scheduling that's been done in this case  
5 in Fairfax?

6 MS. LOFTUS: Your Honor, I -- I do not. I believe  
7 that the plaintiffs had proposed reconvening in March of 2021  
8 to assess where we are at with the schedule and to -- to go  
9 forward and to determine whether the stay needs to stay in  
10 place or whether the Court should revisit it at that time. But  
11 I -- I don't have any knowledge as to what the timeline in  
12 Fairfax --

13 THE COURT: Well, what, are you asking me to continue  
14 this to March 2021?

15 MS. LOFTUS: I --

16 THE COURT: Stay until March 2021?

17 MS. LOFTUS: I would ask this Court to stay the  
18 proceedings and then reconvene the parties for a status hearing  
19 in March of 2021, where this Court can assess whether or not  
20 the stay needs to remain in place given the facts that are  
21 available to the parties and the Court at that time.

22 THE COURT: All right. Well, I think that's  
23 reasonable.

24 You want to opine on the reasonableness or --

25 MR. CONNOLLY: Your Honor, whether I think it's

1 reasonable or not, I'm not wearing the robe, so we're going to  
2 honor whatever the Court orders.

3 THE COURT: Well, I mean, I'll listen to you as to  
4 timing. I mean, I'm going to grant a stay, but would that be  
5 reasonable to give you --

6 MR. CONNOLLY: Yes, Your Honor.

7 THE COURT: -- until March and then --

8 MR. CONNOLLY: Yes.

9 THE COURT: -- and then see where we're going? Okay.

10 MR. CONNOLLY: Of course. And we'll be available any  
11 date that you order us.

12 THE COURT: All right. Well, whatever time. I don't  
13 care. Any Friday in March.

14 What about the end of March? Last Friday in March,  
15 whatever that is?

16 THE COURTROOM DEPUTY: That would be the 26th.

17 THE COURT: 26th?

18 MS. LOFTUS: Yes, sir, and that works for the  
19 government.

20 THE COURT: All right. Well, we'll put the stay in  
21 effect until March the 26th for a status conference.

22 And I don't believe we ought to hear summary  
23 judgment motions at this time. We've got a stay in the case.

24 MR. CONNOLLY: Of course not, Your Honor. I  
25 wouldn't -- I wouldn't ask you to do that in light of your

1 order. Of course.

2 THE COURT: Okay.

3 MR. CONNOLLY: Yeah.

4 What I didn't hear unfortunately, forgive me, is I  
5 didn't hear the date that we're coming back.

6 THE COURT: March 26.

7 MR. CONNOLLY: The 26th. Okay. Thank you.

8 THE COURT: All right. Thank you.

9 We'll adjourn until Monday morning at 9:30.

10 THE LAW CLERK: All rise.

11 (PROCEEDINGS CONCLUDED AT 9:21 A.M.)

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15 UNITED STATES DISTRICT COURT )  
16 EASTERN DISTRICT OF VIRGINIA )

17 I, JULIE A. GOODWIN, Official Court Reporter for  
18 the United States District Court, Eastern District of Virginia,  
19 do hereby certify that the foregoing is a correct transcript  
20 from the record of proceedings in the above matter, to the best  
21 of my ability.

22 I further certify that I am neither counsel for,  
23 related to, nor employed by any of the parties to the action in  
24 which this proceeding was taken, and further that I am not  
25 financially nor otherwise interested in the outcome of the  
action.

Certified to by me this 24TH day of MARCH, 2021.

/s/

JULIE A. GOODWIN, RPR  
Official U.S. Court Reporter  
401 Courthouse Square  
Alexandria, Virginia 22314

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